BADAN PENGURUSAN BERSAMA MESAHILL
v. GALA INTERAKTIF SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
LEONG WAI HONG JC
[CIVIL SUIT NO: WA-11ANCVC-159-12-2021]
23 MAY 2022

Abstract – *The Magistrate's Court has no jurisdiction to grant declaratory relief as its jurisdiction is merely to decide all actions and suits where the amount in dispute or value of the subject matter does not exceed RM1,000. However, where the plaintiff, besides asking for declaratory relief, is also suing for monetary sums well within the Magistrate's Court jurisdiction, the Magistrate's Court should not strike out the whole suit, especially when the monetary claims were not, on the face of it, obviously unsustainable.*

CIVIL PROCEDURE: *Jurisdiction – Magistrate – Powers to grant declaratory relief – Whether only Sessions Court Judge empowered to grant declaratory relief – Subordinate Courts Act 1948, ss. 65, 90*

CIVIL PROCEDURE: *Statement of claim – Addition of declaratory relief – Whether Magistrate's Court has jurisdiction to grant declaratory relief – Whether monetary claims obviously unsustainable – Whether Magistrate wrong to strike out whole suit – Whether court empowered to strike out 'anything in any pleading' – Rules of Court 2012, O. 18 r. 19(1)*

CIVIL PROCEDURE: *Striking out – Appeal against – Appeal against Magistrate's Court decision to dismiss suit – Whether Magistrate's Court had jurisdiction to grant declaratory relief – Whether monetary claims obviously unsustainable – Whether Magistrate wrong to strike out whole suit – Whether court empowered to strike out 'anything in any pleading' – Rules of Court 2012, O. 18 r. 19(1)*

The plaintiff, a joint management body of a development known as Mesa Hill Service Apartment, hired the defendant to provide building management services for the said apartment. Upon the expiration of the contract, the plaintiff requested the defendant to hand over all the plaintiff's documents together with the management accounts. The plaintiff alleged that the defendant refused and/or neglected to hand over the management accounts and wanted a sum of RM7,000 to complete the preparation of the management accounts besides the monthly services fees of RM15,900. The plaintiff further alleged that after agreeing to prepare the management accounts for a sum of RM7,000, the defendant handed over a three-page accounts which were incomplete. Information and clarification were sought from the defendant but the defendant refused to comply. The plaintiff then appointed a third party to complete the management accounts at a cost of

RM44,000. Therefore, the plaintiff filed a writ and statement of claim claiming against the defendant a sum of RM44,000 for breach of contract. The plaintiff also prayed for the surrender of the plaintiff's documents in the possession of the defendant, interests and costs. The plaintiff then amended its statement of claim to set out particulars of the management contract, added additional prayers, punitive and exemplary damages and a declaration that the outstanding invoice owed to the defendant by the plaintiff (if any) was not claimable by the defendant since the defendant had failed to provide complete service to the plaintiff. In its amended defence and counterclaim, the defendant pleaded that it had no obligation to provide the management accounts and denied the allegation by the plaintiff of breach of contract. The defendant then filed an application to strike out the plaintiff's suit under O. 18 r. 19(1)(a) to (d) of the Rules of Court 2012 ('ROC') and/or that the Magistrate's Court had no jurisdiction to grant the declaratory relief sought by the plaintiff. The defendant relied solely on the fact that the plaintiff had amended its statement of claim by adding a declaratory relief and that the said declaratory relief was not an alternative prayer but an integral order in the plaintiff's suit by use of the word 'and' in the reliefs prayed for by the plaintiff. The Magistrate struck out the suit based solely on the ground that she had no jurisdiction to grant a declaratory relief. The plaintiff thus appealed against the Magistrate's Court decision.

Held (allowing appeal in part):

(1) The Magistrate's Court has no jurisdiction to grant declaratory relief. Its jurisdiction is merely to decide all actions and suits where the amount in dispute or value of the subject matter does not exceed RM100,000. It is only a Sessions Judge who is empowered to grant declaratory relief (s. 65 read with s. 90 of the Subordinate Courts Act 1948). However, the Magistrate was wrong to strike out the whole suit just because she has no jurisdiction to grant a declaratory relief. The plaintiff, besides asking for declaratory relief, was also suing for monetary sums which were well within the Magistrate's Court jurisdiction as these sums did not exceed RM100,000. (paras 19 & 20)

(2) Under O. 18 r. 19(1) of the ROC, the court is empowered to strike out 'anything in any pleading'. The Magistrate should have just struck out the declaratory relief in the amended statement of claim. The Magistrate was clearly wrong to strike out the whole suit as the defendant had not shown that these monetary claims were on the face of it 'obviously unsustainable.' (para 21)

Case(s) referred to:

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(refd)***

Wong Loy Fatt & Anor v. Lim Tok Yew [2015] 5 CLJ 602 HC ***(refd)***

Legislation referred to:
Rules of Court 2012, O. 18 r. 19(1)(a), (b), (c), (d)
Subordinate Courts Act 1948, ss. 65, 90

For the appellant - Cheok Swin Meng & Tan Lay Kuan; M/s Yeoh Shim Siow & Lay Kuan
For the respondent - Ng Yew Huoi & Yap Jia Sin; M/s Yew Huoi, How & Assocs

[Editor's note: Appeal from Magistrate's Court; Civil Suit No: WA-A72NCVC-395-01-2021.]

Reported by Suhainah Wahiduddin

JUDGMENT

Leong Wai Hong JC:

Introduction

[1] Parties will be cited as they were cited at the court below.

[2] The defendant had applied to strike out the plaintiff's suit on the basis that the plaintiff 's claims in the amended statement of claim are beyond the jurisdiction of the Magistrates' Court. The Magistrate allowed the application on 7 December 2021.

[3] The plaintiff appealed against the Magistrates' Court decision. I allowed the appeal partly on 22 March 2022. The defendant is dissatisfied and has applied for leave to appeal to the Court of Appeal on 15 April 2022. These are my grounds of judgment.

Background Facts

[4] The plaintiff 's pleaded case is as follows. The plaintiff is the joint management body of a development known as Mesa Hill Service Apartment. The defendant provides building management services.

[5] The plaintiff hired the defendant to provide building management services for Mesa Hill Service Apartment. On the expiration of the contract the plaintiff requested the defendant to hand over all the plaintiff 's documents together with the management accounts.

[6] The plaintiff alleged the defendant refused and or neglected to hand over the management accounts and wanted a sum of RM7,000 to complete the preparation of the management accounts besides the monthly services fees of RM15,900.

[7] The plaintiff also alleged it has no choice but to agree as the plaintiff needed to comply with the rules set by the Commissioner of Building and the Strata Management Act 2013.

[8] The plaintiff further alleged that after agreeing to prepare the management accounts for a sum of RM7,000 the defendant handed over a three-page accounts which the plaintiff's auditors said were incomplete. Information and clarification were sought from the defendant but the defendant refused to comply.

[9] The plaintiff then appointed a third party to complete the management accounts at a cost of RM44,000.

[10] Therefore, the plaintiff filed a writ and statement of claim dated 21 January 2021 claiming against the defendant a sum of RM44,000 for breach of contract. The plaintiff also prayed for surrender of the plaintiff's documents in the possession of the defendant, interest and costs.

[11] Subsequently, as the defendant failed to enter an appearance, the plaintiff had obtained judgment in default against the defendant. The judgment in default was later set aside by the court for reasons that are not material to this appeal.

[12] The plaintiff then amended its statement of claim dated 10 September 2021 to set out particulars of the management contract, added additional prayers for RM3,500, RM1,184, punitive and exemplary damages and a declaration that the outstanding invoice owed to the defendant by the plaintiff (if any) is not claimable by the defendant since the defendant had failed to provide complete service to the plaintiff.

[13] In its amended defence and counterclaim dated 24 September 2021 the defendant denies that its work included audited accounts and data entry work. The defendant pleaded it has no obligation to provide the management accounts. The defendant also denies that it had failed to subsequently do satisfactorily the management accounts based on the agreed fee of RM7,000. The defendant therefore denies the allegation by the plaintiff of breach of contract amounting to RM44,000 payable by the defendant. The defendant further denies that it had failed to hand over all documents back to the plaintiff and is therefore not liable for the claimed sum of RM1,184. Lastly, the defendant alleges fraud and misrepresentation by the plaintiff in respect of the contract to do the management accounts based on the agreed fee of RM7,000.

[14] The defendant then filed an application dated 24 September 2021 to strike out the plaintiff 's suit under O. 18 r. 19(1)(a) to (d) and/or that the Magistrates' Court has no jurisdiction to grant the declaratory relief sought by the plaintiff.

[15] In its supporting affidavit dated 24 September 2021 the defendant relied solely on the fact that the plaintiff had amended its Statement of claim by adding a declaratory relief and that the said declaratory relief was not an

alternative prayer but an integral order in the plaintiff's suit by use of the word "and" in the reliefs prayed for by the plaintiff. (See supporting affidavit at para. 11). The defendant did not mount any argument that the plaintiff's suit claiming for monetary sums should also be struck out. No documents in any event were exhibited to support the striking out.

[16] The plaintiff in its reply affidavit merely averred that it has filed an OS in the Sessions Court to apply to transfer the suit to the Sessions Court.

[17] The defendant in its reply affidavit averred that the filing of the transfer application is an admission by the plaintiff that the Magistrate's Court has no jurisdiction to hear the claim of the plaintiff. The defendant averred that the plaintiff should withdraw its writ and refile in the Sessions Court.

At The Magistrate's Court

[18] The learned Magistrate struck out the suit based solely on the ground that she has no jurisdiction to grant a declaratory relief. This can be seen from her grounds of decision:

> **Dapatan Mahkamah**
>
> [10] Mahkamah berpuas hati dengan hujahan-hujahan Defendan.
>
> [11] Mahkamah juga merujuk kepada kes *Fun Fatt v. Bandar Kuala Lumpur* [2021] 1 LNS 1703 dimana Hakim memetik Malaysian Civil Procedure 2013, at page 242 yang menyatakan:
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> > A matter can be struck out for example, for having no reasonable cause of action if the pleadings do not indicate a cause of action known in law, where the wrong parties are sued, **where the court lacks jurisdiction**, where the party has no *locus standi* or where the matter is *res judicata*.
> >
> > [12] Merujuk kepada Seksyen 90 Akta Mahkamah Rendah 1948:
> >
> > S. 90: Civil Jurisdiction of First Class Magistrate
> >
> > Subject to the limitations contained in this Act, a First Class Magistrate shall have jurisdiction to try all actions and suits of a civil nature where the amount in dispute or value of the subject-matter does not exceed one hundred thousand ringgit.
>
> [12] Mahkamah juga merujuk S. 65(5) Akta Mahkamah Rendah 1948:-
>
> > S.65: Civil Jurisdiction of Sessions Courts
> >
> > 65(5): A Sessions Court may, in respect of any action or suit within the jurisdiction of the Sessions Court, in any proceedings before it:
> >
> > (a) grant an injunction; and
> >
> > (b) make a declaration,

whether or not any other relief, redress or remedy is or could be claimed.

[14] Mahkamah juga menggunapakai kes yang dirujuk oleh Defendan iaitu di dalam kes *Wong Loy Fatt & Anor v. Lim Tok Yew* [2015] 5 CLJ 602 yang menyatakan seperti berikut:

Civil Jurisdiction Of Magistrate

[21] Turning to the second objection of the plaintiff that a magistrate court has no jurisdiction to grant declaratory relief. The relevant provisions in the Subordinate Courts Act 1948 are:

s. 65(5) : A Sessions Court may, in respect of any action or suit within the jurisdiction of the Sessions Court, in any proceedings before it:

(a) grant an injunction; and

(b) make a declaration,

whether or not any other relief, redress or remedy is or could be claimed.

s. 90 Subject to the limitations contained in this Act, a First Class Magistrate shall have jurisdiction to try all actions and suits of a civil nature where the amount in dispute or value of the subject matter does not exceed one hundred thousand ringgit.

[22] Section 90 clearly illustrates that the plaintiff is correct in the position she takes as regards the jurisdiction of a first class magistrate to grant declaratory relief. **It is only a sessions judge who is empowered to grant declaratory relief**.

Kesimpulan

[15] Berdasarkan dapatan-dapatan diatas, Mahkamah berpuas hati dan mendapati sememangnya Mahkamah Majistret tidak mempunyai bidang kuasa terhadap relief yang dituntut oleh Plaintif di Penyata Tuntutan Terpinda tersebut. Maka permohonan Defendan di lampiran 40 ini dibenarkan dengan kos RM500.00.

(emphasis added)

My Analysis

[19] The Magistrate's Court has no jurisdiction to grant declaratory relief. Its jurisdiction is merely to decide all actions and suits where the amount in dispute or value of the subject matter does not exceed RM100,000. It is only a Sessions Judge who is empowered to grant declaratory relief. This is clear from s. 65 read with s. 90 of the Subordinate Courts Act 1948. A High court decision arriving at this same proposition is *Wong Loy Fatt & Anor v. Lim Tok Yew* [2015] 5 CLJ 602 at [21] and [22] SM Komathy Suppiah JC.

[20] However, in my view the learned Magistrate was wrong to strike out the whole suit just because she has no jurisdiction to grant a declaratory relief. This is because the plaintiff, besides asking for declaratory relief in para. 16[e] of the amended statement of claim, is also suing for monetary sums in paras. 16[a] to [c] of the amended statement of claim. These sums are well within the Magistrate's Court jurisdiction as these sums do not exceed RM100,000.

[21] Under O. 18 r. 19(1) Rules of Court 2012 the court is empowered to strike out "anything in any pleading". The learned Magistrate should have just struck out the declaratory relief in para. 16[e] of the amended statement of claim. The Magistrate was clearly wrong to strike out the whole suit as the defendant has not shown that these monetary claims are on the face of it "obviously unsustainable". See *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7 SC at 11e-h. per Mohamed Dzaiddin Abdullah SCJ (delivering judgment of the court).

Decision

[22] In the premises, the appeal is partly allowed with costs. The declaratory relief in para. 16[e] of the amended statement of claim is struck out. The order of the Magistrate's Court dated 26 November 2021 is set aside. The respondent shall pay to the appellant costs of RM10,000 here and below.